IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7795 OF 2006

M/s Poona Flour and Foods. .. Petitioner.

vs.

Maharashtra State Electricity
Distribution Company Ltd.,
& Ors. . .. Respondents.

Mr. Y.R. Mehta for petitioner.
Ms. A.R.S. Baxi for Respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 18th December, 2006.

P.C.

. Rule. Rule is made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner instituted a suit challenging a demand made by the respondent no. 1 Maharashtra State Electricity Distribution Company Ltd., in the sum of Rs. 30,22,650/- vide bill dated 5.4.2004. A temporary injunction application was moved as the petitioner was apprehending disconnection of electricity supply. The trial court rejected the

application and aggrieved thereby an appeal against the order was carried to this Court wherein by an order dated 14.9.2006 an interim relief has been granted restraining the respondent from disconnecting the electricity supply. While dealing with the said appeal while passing order on 14.9.2006 the learned Single Judge of this Court has observed that the bill shows debit entry of Rs. 30,22,650/- under the caption 'debit bill adjustment'. It is further observed that no particulars of the debit bill adjustment are given in the bill. The said sum of Rs. 30,22,650/- is claimed under the head 'debit bill adjustment' indicating that it is an adjustment in respect of the past amounts without giving any details. It is then prima facie observed that the consumer (the petitioner in this petition) is entitled to know the details of such adjustment and in those circumstances interim relief has been granted. So since the beginning parties are aware that the plaintiffs have challenged the bill dated 5.4.2004 making a demand of Rs. 30,22,650/-. At a later point of time, after issues are framed, but before beginning of the trial, the petitioner herein made an application seeking amendment of the plaint. In the first place the petitioner/plaintiff seeks to elaborate the challenge to the demand of Rs. 30,22,650/-. The proposed amendment which seeks addition in para 6 of the plaint is in the nature of

elaborating the challenge to the demand which is already made in the plaint by adding some more grounds. It is thus apparent that what is sought to be amended in para 6 does not in any manner go to change the nature of the suit but the amendment is in the nature of elaboration, clarification and raising additional grounds of challenge to the demand. The learned counsel for the petitioner does not press the challenge to the order passed by the trial court rejecting the amendment application by making insertion in para 8 as the same touches an event that had taken place in the year 1997 finding the meter to be defective. The petitioner does not press the proposed amendment in para 8 of the plaint. So far as the grounds raised in the amendment application by proposing addition in para 10 it is a legal ground about the demand being barred by limitation and the same can be permitted and no objection can be raised for permitting an amendment in that regard.

3. Similarly, in regard to the other part of the order passed by the trial court rejecting amendment in para 11 of the plaint, the learned counsel for the petitioner states that he does not challenge the same and gives up the challenge. In this view of the matter, the amendment application moved by the plaintiff to the extent it proposes an amendment in paras 6 and 10 of the plaint, the same

deserves to be allowed as it does not go to change the nature of the suit or cause any prejudice to the defendant. If the said amendment is permitted the same will result in complete adjudication of the dispute in issue. To the extent the order rejects amendment in paras 6 and 10 of the plaint is concerned, the same deserves to be quashed and set aside as denial of the said amendment is likely to result in miscarriage of justice. In regard to the other part of the order, as the learned counsel for the petitioner has given up the challenge, the order to that extent would hold the field. The situation that emerges is that in so far as the amendment sought to be inserted in paras 8 and 11 of the plaint is concerned, the same stands rejected as the order passed by the trial court to that extent is not challenged by giving up the same.

4. In the result, the writ petition is partly allowed. The impugned order passed by the trial court to the extent it rejects the amendment in paras 6 and 10 of the plaint is concerned, the same is quashed and set aside. The other part of the order which rejects amendment in paras 8 and 11 of the plaint, stands confirmed as the challenge thereto has been given up.

5. The writ petition is partly allowed. Rule is made absolute in the above terms. No order as to

costs.

(A.P. Deshpande, J.)